



01-24-06

DG

PATENT  
Attorney Docket No. F-5495 DIV (0360-0172.01)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: )  
Tom Westberg et al. )  
Serial No.: 10/828,359 )  
Filed: April 20, 2004 )  
Group Art No.: 3762 )  
Examiner: Unknown )  
For: FLUID PRESSURE ACTUATED BLOOD )  
PUMPING SYSTEMS AND METHODS )  
WITH CONTINUOUS INFLOW AND )  
PULSATILE OUTFLOW CONDITIONS )

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" Mailing Label No.: EV643273351US

Date of Deposit: January 17, 2006

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office Box Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Box DAC, Commissioner for Patents, Washington, DC 20231.

NAME Diane G. Kapil

SIGNATURE Diane G. Kapil

Box DAC  
Commissioner for Patents  
Washington, DC 20231

PETITION TO ACCORD A FILING DATE TO A PATENT APPLICATION UNDER  
37 C.F.R. 1.10(d)

Sir:

Applicants hereby petition that this patent application be accorded a filing date of April 20, 2004. As set forth below, Applicants believe this application was mailed to the United States Patent and Trademark Office on April 20, 2004, and the date of April 17, 2004 was incorrectly entered by the U.S. Postal Service on the Express Mail label.

Applicants are promptly filing this petition after unsuccessful attempts before the Office for correction of filing receipts.

It is respectfully submitted that the application was actually filed on Tuesday, April 20, 2004, and that the U.S. Postal Service put the wrong date of April 17, 2004, on the Express Mail label. This petition includes several documents which corroborate Applicants' belief that the requested filing date of April 20, 2004, was the actual date that the application was deposited with the U.S. Postal Service.

The first document is a copy of the Express Mail label, which is enclosed herein as Exhibit A. The Express Mail label appears to be incorrect on its face. The date on the label, April 17, 2004, was a Saturday. We note that the Post Office marked the Express Mail label to indicate that delivery would take place on the following day (which was a Sunday) by noon. It is respectfully submitted that it is unlikely that the U.S. Postal Service would deliver by noon on a Sunday. Therefore, we believe that the Express Mail label is incorrect on its face.

In addition, the following documents, which accompanied the application when it was filed, indicate that the correct filing date is April 20, 2004. These documents are enclosed herein and include:

1. The New Application Transmittal, bearing the same Express Mail Label number (EV318693190US), bears a certificate of service signed and dated April 20, 2004 (Exhibit B).

2. The Information Disclosure Statement, bearing the same Express Mail Label number (EV318693190US), bears a certificate of service signed and dated April 20, 2004 (Exhibit C).

3. Check (number 14580), for the filing fee of \$770.00, is dated April 20, 2004 (Exhibit D).

4. The Return Receipt Postcard that accompanied the application, bearing the same Express Mail Label number is dated April 20, 2004 (Exhibit E).

5. A copy of the Filing Receipt with what is believed to be the correct filing date (Exhibit F).

Accordingly, please correct the Filing Receipt to reflect the correct filing date of April 20, 2004.

Respectfully submitted,

Date: Jan. 17, 2006

  
\_\_\_\_\_  
Gary W. McFarron  
Registration No. 27,357

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Cummings & Mehler, Ltd.  
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Attorneys for Applicant



PATENT

Attorney Docket No. F-5495 DIV (0360-0172.01)

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INFLOW AND PULSATILE )  
OUTFLOW CONDITIONS )

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NAME Diane G. Kapil

SIGNATURE Diane G. Kapil

Box DAC  
Commissioner for Patents  
Washington, DC 20231

Certificate of Mailing Under 37 CFR 1.10

I hereby certify that the correspondence listed below is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service, **Label No. EV643273351US** under 37 CFR 1.10 on January 17, 2006 and is addressed to: Box DAC, Commissioner for Patents, Washington, DC 20231:

1. Certificate of Mailing.
2. Petition To Accord A Filing Date To A Patent Application Under 37 C.F.R. 110(d).
3. Return Receipt Postcard.

Name: Diane G. Kapil

Signature: Diane G. Kapil  
**EV643273351US**

**Customer Copy**  
Label 11-F June 2002



EV 318693190 US



UNITED STATES POSTAL SERVICE®

**Post Office To Addressee**

ORIGIN (POSTAL USE ONLY)			
PO ZIP Code <b>53045</b>	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>	
Date In <b>4/17/04</b>	Postage <b>\$0.65</b>		
Mo. Day Year <b>Mo. Day Year</b>	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM		
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee <input type="checkbox"/>	
Weight <b>0.1 lbs. 1 ozs.</b>	Int'l Alpha-Country Code	COD Fee	Insurance Fee <input type="checkbox"/>
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials <b>JKL</b>	Total Postage & Fees <b>\$0.65</b>	

DELIVERY (POSTAL USE ONLY)			
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Mo. Day			
Delivery Attempt	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Mo. Day			
Delivery Date	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature	
Mo. Day			
<input type="checkbox"/> <b>WAIVER OF SIGNATURE</b> (Postal Use Only) I acknowledge that my signature is waived or signature is required for delivery to persons without obtaining a signature on address or address is unknown or agreed (Postal carrier employee judges that article can be left in secure location with authorized delivery service). I agree to these conditions valid proof of delivery. <b>NO DELIVERY</b> <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday <input type="checkbox"/> Customer Signature			

CUSTOMER USE ONLY	
METHOD OF PAYMENT: Express Mail Corporate Acct. No. <b>A531741</b>	

Federal Agency Acct. No. or  
Postal Service Acct. No.

**FROM: (PLEASE PRINT)** PHONE **262-763-1390**

**Ryan K. O'Connell & MANTON, SC  
2100 K St. Suite 1000  
MILWAUKEE WI 53202-0618**

**P-5495 DIV**

**L delivered 4/21/04**

**PRESS HARD:**  
You are making 3 copies. **FOR PICKUP OR TRACKING CALL 1-800-222-1811. www.usps.com**



TO: (PLEASE PRINT)	
PHONE ( )	
<b>MAIL STOP Patent Application COMMISSIONER FOR PATENTS P.O. BOX 1450 ALEXANDRIA VA 22313-1450</b>	

**Exhibit A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**NEW APPLICATION TRANSMITTAL Under 37 CFR § 1.53(b)**

Transmitted herewith for filing is the patent application of

Inventor(s): *Tom Westberg; Mark Vandlik; and Rohit Vishnoi*

**WARNING:** 37 C.F.R. § 1.41(a)(1) points out:

'(a) A patent is applied for in the name or names of the actual inventor or inventors.  
(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in § 1.53(d)(4) and § 1.63(c). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in § 1.17(i) is filed supplying or changing the name or names of the inventor or inventors.'

For (title): *Fluid Pressure Actuated Blood Pumping Systems and Methods with Continuous Inflow and Pulsatile Outflow Conditions*

**1. Type of Application**

This new application is for a(n)  
 Original (nonprovisional)  
 Design  
 Plant

**NOTE:** If one of the following 3 items apply then complete and attach ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF A PRIOR U.S. APPLICATION CLAIMED and a NOTIFICATION IN PARENT APPLICATION OF THE FILING OF THIS CONTINUATION APPLICATION.

Divisional.  
 Continuation.  
 Continuation-in-part (C-I-P).

**2. Benefit of Prior U.S. Application(s) (35 U.S.C. 119(e), 120, or 121)**

The new application being transmitted claims the benefit of prior U.S. application(s). Enclosed are ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED.

CERTIFICATION UNDER 37 C.F.R. 1.10\*

I hereby certify that this New Application Transmittal and the documents referred to as attached therein are being deposited with the United States Postal Service on this date 20 April 2004, in an envelope as 'Express Mail Post Office to Addressee' mailing Label Number EV318693190115, addressed as follows: Mail Stop Patent Application, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Judith Dunaway  
(type or print name of person mailing paper)

  
Signature of person mailing paper

**3. Papers Enclosed**

A. Required for filing date under 37 C.F.R. § 1.53(b) (Regular) or 37 C.F.R. § 1.153 Design Application

<u>132</u>	Pages of specification
<u>01</u>	Pages of claims
<u>01</u>	Abstract
<u>41</u>	Sheets of drawing
[ x ]	formal
[ ]	informal

B. Other documents enclosed: \_\_\_\_\_

**4. Additional papers enclosed**

- [ ] Preliminary Amendment
- [ x ] Information Disclosure Statement (37 C.F.R. 1.98)
- [ x ] Form PTO-1449 (PTO/SB/08A and 08B)
- [ ] Citations
- [ ] Declaration of Biological Deposit
- [ ] Submission of "Sequence Listing," computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.
- [ ] Authorization of Attorney(s) to Accept and Follow Instructions from Representative
- [ ] Special Comments
- [ ] Other

**5. Declaration or oath**

- [ ] Enclosed
- [ ] newly executed
- [ ] copy from parent application identified above

Executed by (*check all applicable boxes*)

- [ ] inventor(s).
- [ ] legal representative of inventor(s).
- [ ] joint inventor or person showing a proprietary interest on behalf of inventor who refused to sign or cannot be reached.
- [ ] This is the petition required by 37 CFR 1.47 and the statement required by 37 CFR 1.47 is also attached. See Item 13 below for fee.

[ x ] Not Enclosed.

[ x ] Application is made by a person authorized under 37 C.F.R. 1.41(c) on behalf of all the above named inventor(s). (The declaration or oath, along with the surcharge required by 37 CFR 1.16(e) can be filed subsequently).

**6. Inventorship Statement**

The inventorship for all the claims in this application are:

- [ x ] The same.
- [ ] Not the same. An explanation, including the ownership of the various claims at the time the last claimed invention was made
  - [ ] is submitted.
  - [ ] will be submitted.

**7. Language**

[  ] English  
 [  ] Non-English

[  ] The attached translation includes a statement that the translation is accurate. 37 C.F.R. 1.52(d).

**8. Assignment**

[  ] An assignment of the Invention to Baxter International Inc.  
 [  ] is attached. A separate [  ] COVER SHEET FOR ASSIGNMENT (DOCUMENT) ACCOMPANYING NEW PATENT APPLICATION or [  ] FORM PTO 1595 is also attached.  
 [  ] will follow.  
 [  ] was filed in the parent application identified above

**9. CERTIFIED COPY**

Certified copy(ies) of application(s)

Country	Appn. No.	Filed

from which priority is claimed

[  ] is (are) attached.  
 [  ] will follow.

*NOTE: The foreign application forming the basis for the claim for priority must be referred to in the oath or declaration. 37 CFR 1.55(a) and 1.63.*

**10. Fee Calculation (37 C.F.R. 1.16)**

A. [  ] Regular application

CLAIMS AS FILED					
	Number Filed	Number Included in Basic Fee	Number Extra	Rate	Basic Fee 37 CFR 1.16(a) \$770.00
Total Claims 37 CFR 1.16(c)	1	-20 =	(19)	x \$ 18.00	\$0
Independent Claims (37 CFR 1.16(b))	1	-3 =	(2)	x \$ 86.00	\$0
Multiple Dependent claim(s) if any (37 CFR 1.16(d))				\$290.00	\$0
<b>FILING FEE CALCULATION</b>					<b>\$770</b>

[  ] Amendment cancelling extra claims enclosed.  
 [  ] Amendment deleting multiple-dependencies enclosed.  
 [  ] Fee for extra claims is not being paid at this time.

Filing Fee Calculation

770.00

B. [ ] Design application  
(\$340.00 - 37 CFR 1.16(f))  
Filing Fee Calculation \_\_\_\_\_

C. [ ] Plant application  
(\$530.00 - 37 CFR 1.16(g))  
Filing Fee Calculation \_\_\_\_\_

**11. Small Entity Statement**

[ ] The applicant is a Small Entity as defined by 37 CFR 1.9 and 1.27 and is entitled to small entity status.  
[ ] Small Entity Filing Fee: \_\_\_\_\_

**12. Fee Payment Being Made at This Time**

[ ] Not Enclosed

[ ] No filing fee is to be paid at this time.  
*(This and the surcharge required by 37 C.F.R. 1.16(e) can be paid subsequently.)*

[x] Enclosed

[x] Filing fee \_\_\_\_\_ 770.00

[ ] Recording assignment  
(\$40.00; 37 C.F.R. 1.21(h)) \_\_\_\_\_

[ ] Petition fee for filing by other than all the inventors or person on behalf of the inventor where inventor refused to sign or cannot be reached

(\$130.00; 37 C.F.R. 1.47 and 1.17(i)) \_\_\_\_\_

[ ] For processing an application with a specification in a non-English language  
(\$130.00; 37 C.F.R. 1.52(d) and 1.17(k)) \_\_\_\_\_

[ ] Processing and retention fee  
(\$130.00; 37 C.F.R. 1.53(d) and 1.21(l)) \_\_\_\_\_

[ ] Fee for international-type search report  
(\$40.00; 37 C.F.R. 1.21(e)) \_\_\_\_\_

Total fees enclosed \_\_\_\_\_ 770.00

**13. Method of Payment of Fees**

[x] Check in the amount of \$ 770.00 \_\_\_\_\_.  
[ ] Charge Account No. \_\_\_\_\_ in the amount of \_\_\_\_\_.  
A duplicate of this transmittal is attached.

**14. Authorization to Charge Additional Fees**

[x] The Commissioner is hereby authorized to charge the following additional fees by this paper and during the entire pendency of this application to Account No. 06-2360 \_\_\_\_\_

[x] 37 C.F.R. 1.16(a), (f) or (g) (filing fees)

[x] 37 C.F.R. 1.16(b), (c) and (d) (presentation of extra claims)

[x] 37 C.F.R. 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)

[x] 37 C.F.R. §§ 1.17(a)(1-5) (extension fees pursuant to § 1.136(a)).

[x] 37 C.F.R. 1.17 (application processing fees)

[ ] 37 C.F.R. 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. 1.311(b))

15. **Instructions as to Overpayment**

Credit Account No. 06-2360  
 Refund

Reg. No. 29,243

Tel. No.: (262) 783 - 1300

SIGNATURE OF PRACTITIONER

Daniel D. Ryan

(type or print name of attorney)

RYAN KROMHOLZ & MANION, S.C.

(P.O. Address)

Post Office Box 26618

MILWAUKEE, WISCONSIN 53226

**Statement Where Additional Pages are Added**

Plus Added Page for New Application Transmittal Where Benefit of Prior U.S. Application(s) Claimed

**Statement Where No Further Pages Added**

(if no further pages form a part of this Transmittal, then end this Transmittal with this page and check the following item)

This transmittal ends with this page.

**ADDED PAGES FOR APPLICATION TRANSMITTAL WHERE BENEFIT  
OF PRIOR U.S. APPLICATION(S) CLAIMED**

**NOTE:** "In order for an application to claim the benefit of a prior filed copending national application, the prior application must name as an inventor at least one inventor named in the later filed application and disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112." 37 CFR 1.78(a).

**NOTE:** "IN ADDITION THE PRIOR APPLICATION MUST BE (1) COMPLETE AS SET FORTH IN S 1.51, OR (2) ENTITLED TO A FILING DATE AS SET FORTH IN S 1.53(B) AND INCLUDE THE BASIC FILING FEE SET FORTH IN S 1.16; OR (3) ENTITLED TO A FILING DATE AS SET FORTH IN S 1.53(B) AND HAVE PAID THEREIN THE PROCESSING AND RETENTION FEE SET FORTH IN S 1.21(L) WITHIN THE TIME PERIOD SET FORTH IN S 1.53(D)." 37 CFR 1.78(A).

**16. Relate Back-35 U.S.C. 120**

**NOTE:** "ANY APPLICATION CLAIMING THE BENEFIT OF A PRIOR FILED COPENDING NATIONAL OR INTERNATIONAL APPLICATION MUST CONTAIN OR BE AMENDED TO CONTAIN IN THE FIRST SENTENCE OF THE SPECIFICATION FOLLOWING THE TITLE A REFERENCE TO SUCH PRIOR APPLICATION IDENTIFYING IT BY SERIAL NUMBER AND FILING DATE OR INTERNATIONAL APPLICATION NUMBER AND INTERNATIONAL FILING DATE AND INDICATING THE RELATIONSHIP OF THE APPLICATIONS." 37 CFR 1.78(A). SEE ALSO THE NOTICE OF APRIL 28, 1987 (1079 O.G. 32 TO 46).

[ X ] The specification includes the following recitation:

**Related Applications:**

This application claims the benefit of co-pending application Serial No. 09/390,265 filed 3 September 1999 and entitled "Fluid Pressure Actuated Blood Pumping Systems and Methods with Continuous Inflow and Pulsatile Outflow Conditions". This application also claims the benefit of copending patent application Serial No. 09/390,268 filed 3 September 1999 and entitled "Programmable Fluid Pressure Actuated Blood Processing Systems and Methods".

**NOTE:** THE PROPER REFERENCE TO A PRIOR FILED PCT APPLICATION WHICH ENTERED THE U.S. NATIONAL PHASE IS THE U.S. SERIAL NUMBER AND THE FILING DATE OF THE PCT APPLICATION WHICH DESIGNATED THE U.S.

**NOTE:** (1) WHERE THE APPLICATION BEING TRANSMITTED ADDS SUBJECT MATTER TO THE INTERNATIONAL APPLICATION THEN THE FILING CAN BE AS A CONTINUATION-IN-PART OR (2) IT IS DESIRED TO DO SO FOR OTHER REASONS, E.G. WHERE NO DECLARATION IS AVAILABLE, NO ENGLISH TRANSLATION IS AVAILABLE OR NO FEE IS TO BE PAID ON FILING THEN THE FILING CAN BE AS A CONTINUATION. IN THESE CASES THE INTERNATIONAL APPLICATION DESIGNATING THE U.S. IS TREATED AS THE PARENT CASE IN THE U.S. AND IS AN ALTERNATIVE TO THE COMPLETION OF THE INTERNATIONAL APPLICATION UNDER 35 U.S.C. 371(C)(4) WHICH MUST MEET THE REQUIREMENTS OF 37 CFR 1.61(A). THIS ALTERNATIVE PERMITS THE COMPLETION OF THE FILING REQUIREMENTS WITHIN ANY TERM SET BY THE PTO UNDER 37 CFR 1.53(D) TO WHICH THE EXTENSION PROVISIONS OF 37 CFR 1.136(A) APPLY. (WHEREAS, IF THE FILING IS AS AN INTERNATIONAL APPLICATION ENTERING THE U.S. STAGE THEN THE FEE, DECLARATION AND/OR ENGLISH TRANSLATION (WHERE NECESSARY) IS DUE WITHIN 20 MONTHS OF THE PRIORITY DATE BUT CAN BE PAID WITHIN 22 MONTHS OF THE PRIORITY DATE (OR IS DUE WITHIN 30 MONTHS OF THE PRIORITY DATE BUT CAN BE SUBMITTED WITHIN 32 MONTHS OF THE PRIORITY DATE) WITH THE SURCHARGES SET FORTH IN 37 CFR 1.492(E), (F) AND 37 CFR 1.495(C); HOWEVER, THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THIS 22 OR (32 MONTH) PERIOD. 37 CFR 1.61(B).)

**NOTE:** THE DEADLINE FOR ENTERING THE NATIONAL PHASE IN THE U.S. FOR AN INTERNATIONAL APPLICATION WAS CLARIFIED IN THE NOTICE OF APRIL 28, 1987 (1079 O.G. 32 TO 46) AS FOLLOWS:

"The Patent and Trademark Office considers the International application to be pending until the 22nd month from the priority date if the United States has been designated and no Demand for International Preliminary Examination has been filed prior to the expiration of the 19th month from the priority date and until the 32nd month from the priority date if a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of the 19th month from the priority date, provided that a copy of the international application has been communicated to the Patent

*and Trademark Office within the 20 or 30 month period respectively. If a copy of the international application has not been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively, the international application becomes abandoned as to the United States 20 or 30 months from the priority date respectively. These periods have been placed in the rules as paragraph (h) of S 1.494 and paragraph (i) of S 1.495. A continuing application under 35 U.S.C. 365(c) and 120 may be filed anytime during the pendency of the international application."*

## 17. Relate Back-35 U.S.C. 119 Priority Claim for Prior Application

The prior U.S. application(s), including any prior International Application designating the U.S., identified above in item 17, in turn itself claim(s) foreign priority (ies) as follows:

country	appl. no.	filed on
The certified copy (ies) has (have)		
<input type="checkbox"/>	been filed on _____	in prior application _____ which was filed on _____
<input type="checkbox"/>	is (are) attached	

**WARNING:** *The Certified Copy of the priority application which may have been communicated to the PTO by the International Bureau may not be relied on without any need to file a Certified Copy of the priority application in the continuing application. This is so because the certified copy of the priority application communicated by the International Bureau is placed in a folder and is not assigned a U.S. Serial Number unless the national stage is entered. Such folders are disposed of if the national stage is not entered. Therefore such certified copies may not be available if needed later in the prosecution of a continuing application. An alternative would be to physically remove the priority documents from the folders and transfer them to the continuing application. The resources required to request transfer, retrieve the folders, make suitable record notations, transfer the certified copies, enter and make a record of such copies in the continuing application are substantial. Accordingly, the priority documents in folders of international applications which have not entered the national stage may not be relied on.*

## 18. Maintenance of Copendency of Prior Application

**NOTE:** *The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the continuation application.*

### A. [ ] Extension of time in prior application

A petition, fee and response extends the term in the pending prior application until \_\_\_\_\_  
 A copy of the petition filed in prior application is attached

### B. [ ] Conditional Petition for Extension of Time in Prior Application

A conditional petition for extension of time is being filed in the pending prior application.  
 A copy of the conditional petition filed in the prior application is attached

## 19. Further Inventorship Statement Where Benefit of Prior Application(s) Claimed

**NOTE:** *If the continuation, continuation-in-part, or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation, continuation-in-part, or divisional application. 37 CFR 1.62(a)*

**NOTE:** *In the case of a continuation-in-part application which adds and claims additional disclosure by amendment, an oath or declaration as required by § 1.63 must be filed. In those situations where a new oath or declaration is required due to additional subject matter being claimed, additional inventors may be named in the continuing application. In a continuation or divisional application which discloses and claims only subject matter disclosed in a prior application, no additional oath or declaration is required and the application must name as inventors the same or less than all the inventors in the prior application. 37 CFR 1.60(c). (Dealing with the continuation situation).*

(a) [ ] This application discloses and claims only subject matter disclosed in the prior application whose particulars are set out above and the inventor(s) in this application are  
[ ] the same.  
[ ] the following inventor(s) have been deleted:  
[ ] \_\_\_\_\_  
[ ] the following inventor(s) have been added:  
[ ] \_\_\_\_\_

(b) [ ] This application discloses and claims additional disclosure and a new declaration or oath is being filed. With respect to the prior application the inventor(s) in this application are  
[ ] the same.  
[ ] the following inventor(s) have been deleted:  
[ ] \_\_\_\_\_  
[ ] the following inventor(s) have been added:  
[ ] \_\_\_\_\_

(c) The inventorship for all the claims in this application are  
[ x ] the same.  
[ ] not the same, and an explanation, including the ownership of the various claims at the time the last claimed invention was made  
[ ] is submitted.  
[ ] will be submitted.

**20. Abandonment of Prior Application (if applicable)**

[ ] Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application.

**NOTE:** ACCORDING TO THE NOTICE OF MAY 13, 1983 (103, TMOG 6-7) THE FILING OF A CONTINUATION OR CONTINUATION-IN-PART APPLICATION IS A PROPER RESPONSE WITH RESPECT TO A PETITION FOR EXTENSION OF TIME OR A PETITION TO REVIVE AND SHOULD INCLUDE THE EXPRESS ABANDONMENT OF THE PRIOR APPLICATION CONDITIONED UPON THE GRANTING OF THE PETITION AND THE GRANTING OF A FILING DATE TO THE CONTINUING APPLICATION.

Docket No. F-5495 DIV

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Westberg et al.  
Serial No.: Unknown  
Filed: Unknown  
For: Fluid Pressure Actuated Blood Pumping Systems and Methods with Continuous Inflow and Pulsatile Outflow Conditions

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT WITHIN  
THREE MONTHS OF FILING OR BEFORE MAILING OF FIRST OFFICE ACTION  
(37 CFR 1.97(b))**

**NOTE:** "An information disclosure statement shall be considered by the Office if filed: (1) within three months of the filing date of a national application; (2) within three months of the date of entry of the national stage as set forth in S 1.491 in an international application; or (3) before the mailing date of a first Office action on the merits, whichever event occurs last." 37 CFR 1.97(b).

**NOTE:** The "filing date of a national application" under 37 CFR 1.97(b) has two possible meanings. Where the filing is a direct one to the United States Patent & Trademark Office, the filing is defined in 37 CFR 1.53(b) as "the date on which: (1) A specification containing a description pursuant to S 1.71 and at least one claim pursuant to S 1.75; and (2) any drawing required by S 1.81(a), are filed in the Patent and Trademark Office in the name of the actual inventor or inventors as required by S 1.41." 37 CFR 1.97(b)(1). On the other hand, an international application that enters the national stage occurs when the applicant has filed the documents and fees required by 35 U.S.C. S 371(c) within the periods set forth in S 1.494 or S 1.495. 35 U.S.C. S 371(c) requires the filing of the following: (1) the national fee; (2) a copy of the international application, unless already sent by the International Bureau, and an English translation if filed in another language; (3) amendments under PCT Article 19, with a translation into English if made in another language; (4) an oath or declaration; and (5) a translation into English of any annexes to the international preliminary examination report, if such annexes were made in another language. 37 CFR 1.97(b)(2).

**IDENTIFICATION OF TIME OF FILING THE ACCOMPANYING INFORMATION  
DISCLOSURE STATEMENT**

The information disclosure statement submitted herewith is being filed WITHIN THREE MONTHS OF THE FILING DATE OF THE APPLICATION OR DATE OF ENTRY INTO THE NATIONAL STAGE OF AN INTERNATIONAL APPLICATION OR BEFORE THE MAILING DATE OF A FIRST OFFICE ACTION ON THE MERITS, WHICHEVER EVENT OCCURS LAST. 37 CFR 1.97(b).

**NOTE** "NO CERTIFICATION OR FEE IS DUE WHEN THE FILING IS MADE WITHIN THE ABOVE TIME PERIOD. IT IS ADVISABLE TO ENSURE THAT NO OFFICE ACTION HAS BEEN MAILED IF THE DISCLOSURE STATEMENT IS DELAYED UNTIL AFTER THREE MONTHS FROM FILING.

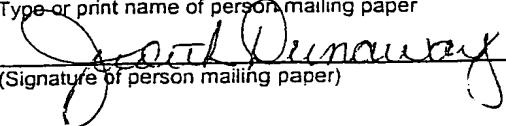
**NOTE:** "An information disclosure statement will be considered to have been filed on the day it was received in the Office, or on an earlier date of a mailing if accompanied by a properly executed certificate of mailing under 37 CFR 1.8, or Express Mail certificate under 37 CFR 1.10. An Office action is mailed on the date indicated in the Office action." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

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**CERTIFICATE OF MAILING (37 CFR 1.8(a)) or (37 CFR 1.10)**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United State Postal Service on the date shown below as Express Mail Label No. EV31869319015 in an envelope addressed as follows: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Judith Dunaway  
Type or print name of person mailing paper

(Signature of person mailing paper)  


Date: 20 April 2004

**NOTE:** "The term 'national application' includes continuing applications (continuations, divisions, continuations-in-part) so three-months will be measured from the actual filing date of an application as opposed [sic] to the effective date of a continuing application." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

**NOTE:** "An action on the merits means an action which treats the patentability of the claims in an application, as opposed to only formal or procedural requirements. An action on the merits would, for example, contain a rejection or indication of allowability of a claim or claims rather than just a restriction requirements (37 CFR 1.142) or just a requirement for additional fees to have a claim considered (37 CFR 1.16(d)). Thus, if an application was filed on Jan. 1 and the first Office action on the merits was not mailed until six months later on July 1, the examiner would be required to consider any proper information disclosure statement filed prior to July 1." Notice of April 20, 1992 (1138 O.G. 37-41, 39).

**WARNING:** "A PETITION FOR SUSPENSION OF ACTION TO ALLOW APPLICANT TIME TO SUBMIT AN INFORMATION DISCLOSURE STATEMENT WILL BE DENIED AS FAILING TO PRESENT GOOD AND SUFFICIENT REASONS, SINCE 37 CFR 1.97 PROVIDES ADEQUATE RECOURSE FOR THE TIMELY SUBMISSION OF PRIOR ART FOR CONSIDERATION BY THE EXAMINER." NOTICE OF JULY 6, 1992 (1141 O.G. 63).

The submission of any document herewith is not intended as an admission that such document constitutes prior art against the claims of the present application or that such document is considered material to patentability as defined in 37 CFR §1.56(b). Applicant does not waive any rights to take any action which would be appropriate to antedate or otherwise remove as a competent reference any document which is determined to be a *prima facie* prior art reference against the claims of the present application.

**COPIES OF THE DOCUMENTS LISTED ON THE ATTACHED FORM PTO-1449 CAN BE FOUND IN THE FILE WRAPPER OF PARENT APPLICATION SERIAL NO. 09/390,265 FILED 3 September 1999 AND ARE THEREFORE NOT INCLUDED WITH THIS SUBMISSION.**

Should any fees be necessary in connection with this submission, please charge same to Account No. 06-2360.

Date 20 April 2004

Reg. No. 29,243

Telephone No.: (262) 783-1300



*Signature of Attorney of Record*

Daniel D. Ryan

*Type or Print Name of Attorney of Record*

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226-0618

LIST OF PRIOR ART CITED BY APPLICANT <i>(Use several sheets if necessary)</i>	ATTY DOCKET NO. <b>F-5495 DIV</b>	SERIAL NO.
	APPLICANT <b>Westberg et al.</b>	
	CUSTOMER NO. 26308	FILING DATE
		GROUP

### U.S. PATENT DOCUMENTS

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
-	3,783,453	01/1974	Bolie			
-	3,919,722	11/1975	Harmison			
-	4,162,543	07/1979	Shumakov et al.			
-	4,175,264	11/1979	Schiff			
-	4,373,527	02/1983	Fischell			
-	4,381,567	05/1983	Robinson et al.			
-	4,428,744	01/1984	Edelson			
-	4,467,844	08/1984	DiGianfilippo et al.			
-	4,612,007	09/1986	Edelson			
-	4,613,322	09/1986	Edelson			
-	4,623,328	11/1986	Hartranft			
-	4,648,430	03/1987	DiGianfilippo et al.			
-	4,657,529	04/1987	Prince et al.			
-	4,662,358	05/1987	Farrar et al.			
-	4,670,007	06/1987	Wheeldon et al.			
-	4,683,889	08/1987	Edelson			
-	5,112,298	05/1992	Prince et al.			
-	5,149,413	09/1992	Maget			
-	5,200,090	04/1993	Ford et al.			
-	5,205,819	04/1993	Ross et al.			
-	5,438,510	08/1995	Bryant et al.			
-	5,593,290	01/1997	Greisch et al.			
-	5,693,091	12/1997	Larson Jr. et al.			
-	5,718,248	02/1998	Trumble et al.			
-	5,856,929	01/1999	McClendon et al.			
-	5,888,186	03/1999	Trumble et al.			
-	6,491,656	12/2002	Morris			
-	6,495,366	12/2002	Briggs			

EXAMINER

DATE CONSIDERED

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this of with next communication to applicant.

LIST OF PRIOR ART CITED BY APPLICANT (Use several sheets if necessary)	ATTY DOCKET NO. F-5495 DIV	SERIAL NO. Unknown
	APPLICANT Westberg et al.	
	CUSTOMER NO. 26308	FILING DATE

### U.S. PATENT DOCUMENTS

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
-	4,479,761	10/1984	Bilstad et al.			
✓	5,746,708	05/1998	Giesler et al.			
✓	4,486,189	12/1984	Troutner et al.			
✓	4,828,543	05/1989	Weiss et al.			
✓	5,344,568	09/1994	Kitaevich et al.			
✓	5,921,951	07/1999	Morris			
- ✓	5,273,517	12/1993	Barone et al.			
- ✓	4,965,846	10/1990	Williamson IV			
- ✓	4,410,341	10/1983	Edwards et al.			
- ✓	3,681,899	08/1972	Grote			
- ✓	4,447,191	05/1984	Bilstad et al.			
- ✓	4,481,827	11/1994	Bilstad et al.			
- ✓	4,526,515	07/1985	Devries			
- ✓	5,232,437	08/1993	Lysaght et al.			
- ✓	5,588,816	12/1996	Abbott et al.			
- ✓	5,762,791	06/1998	Deniega			
- ✓	5,795,317	08/1998	Brierton et al.			
- ✓	RE 36,871	09/2000	Epstein et al.			
- ✓	3,656,873	04/1972	Schiff			
- ✓	4,750,868	06/1988	Lundback			

EXAMINER	DATE CONSIDERED
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LIST OF PRIOR ART CITED BY APPLICANT  
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ATTY DOCKET NO.	SERIAL NO.
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APPLICANT	
Westberg et al.	
FILING DATE	GROUP

U.S. PATENT DOCUMENTS

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
.	5,746,708	5/5/98	Giesler et al			
.	4,828,543	5/9/89	Weiss et al.			
.	4,486,189	12/4/84	Troutner et al.			
.	4,479,761	10/30/84	Bilstad et al			
.	5,921,951	7/13/99	Morris			
.	5,593,290	1/14/97	Greisch et al.			
.	5,989,438	11/23/99	Fumiayama			
.	5,482,440	1/9/96	Dennehey et al			
.	5,871,693	2/16/99	Lindsay			
.	5,311,908	5/17/94	Barone et al.			
.	5,462,416	10/31/95	Dennehey et al.			

FOREIGN PATENT DOCUMENTS

	DOCUMENT NUMBER	DATE	COUNTRY	Class	Subclass	Translation Yes No

OTHER PRIOR ART (*Including Author, Title, Date, Pertinent Pages, Etc.*)


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**Westberg et al.**

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GROUP

**U.S. PATENT DOCUMENTS**

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
.	5,769,811	06/23/98	Stacey et al.			
.	5,938,634	08/17/99	Packard			
.	5,951,509	09/14/99	Morris			
.	6,106,498	08/22/00	Friedli et al			
.	5,722,947	03/03/98	Jeppsson et al.			
.	4,816,019	03/28/89	Kamen			
.	4,077,882	03/07/78	Gangemi			
.	4,858,883	08/22/89	Webster			
.	6,071,423	06/06/00	Brown et al			
.	4,119,120	10/10/78	Mehaffy et al			
.	5,344,568	09/07/99	Kitaevich et al			

**FOREIGN PATENT DOCUMENTS**

	DOCUMENT NUMBER	DATE	COUNTRY	Class	Subclass	Translates Yrs No

**OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)**


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ATTY DOCKET NO. **F-5495 DIV** SERIAL NO.

APPLICANT

**Westberg et al.**

FILING DATE

GROUP

**U.S. PATENT DOCUMENTS**

Examiner Initial	DOCUMENT NUMBER	Date	Name	Class	Subclass	Filing Date (If Appropriate)
-	5,421,823	06/06/95	Kamen et al.			
-	5,431,626	07/11/95	Bryant et al			
-	5,437,624	08/01/95	Langley			
-	5,438,510	08/01/95	Bryant et al			
-	5,474,683	12/12/95	Bryant et al			
-	5,628,908	5/13/97	Kamen et al			
-	5,634,896	06/03/97	Bryant et al			
-	5,651,766	07/29/97	Kingsley et al			
-	5,676,644	10/14/97	Toavs et al			
-	5,746,719	05/05/98	Farra et al			
-	5,755,683	05/26/98	Houle et al			

**FOREIGN PATENT DOCUMENTS**

	DOCUMENT NUMBER	DATE	COUNTRY	Class	Selection	Transmission Yes No
-	W0 97/02059	1997	PCT			
-	EP 0771569		EP			
-	WO 96/40319	1996	PCT			

**OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)**


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LIST OF PRIOR ART CITED BY APPLICANT <i>(Use several sheets if necessary)</i>	ATTY DOCKET NO. F-5495 DIV	SERIAL NO.
	APPLICANT Westberg et al.	
	FILING DATE	GROUP

#### U.S. PATENT DOCUMENTS

Examiner Initial	DOCUMENT NUMBER	DATE	NAME	CLASS	Subclass	Filing Date (If Appropriate)
-	4,778,451	10/18/88	Kamen			
-	4,479,760	10/30/84	Bilstad et al.			
-	4,479,762	10/30/84	Bilstad et al.			
-	4,808,161	02/28/89	Kamen			
-	4,865,584	09/12/89	Epstein et al.			
-	5,062,774	11/05/91	Kramer et al.			
-	5,088,515	02/18/92	Kamen			
-	5,108,367	04/28/92	Epstein et al.			
-	5,178,182	01/12/93	Kamen			
-	5,193,990	03/16/93	Kamen et al.			
-	5,350,357	09/27/94	Kamen et al.			

#### FOREIGN PATENT DOCUMENTS

	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	Subclass	Translation Ver No
-	WO 98/22165	1998	PCT			
-	WO 98/22163	1998	PCT			
-	WO 96/40328	1996	PCT			
-	WO 95/20985	1995	PCT			
-	WO 97/09074	1997	PCT			

#### OTHER PRIOR ART (*Including Author, Title, Date, Pertinent Pages, Etc.*)

• -	Therakos Brochure Circa 1998

EXAMINER	DATE CONSIDERED
----------	-----------------

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this of with next communication to applicant.

Original patent application of Tom Westber, Mark Vandlik and Rohit Ishnoi entitled Fluid Pressure Actuated Blood Pumping Systems and Methods with Continuous Inflow and Pulsatile Outflow Conditions, consisting of: transmittal letter with added pages for US priority claim; 132 pages specification; 1 page claims; 1 page abstract; 41 sheets of formal drawings; information disclosure statement (without copies of references); and Check No. 14580 - \$770.00

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F-5495 DIV

AN KROMHOLZ & MANION, S.C.

14580

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14580 10759005751 0014 033 548

Exhibit D

SEARCHED INDEXED SERIALIZED FILED  
ENTERED

Original patent application of Tom Westberg, Mark Vandlik  
and Rohit Shnoi entitled Fluid Pressure Assisted Blood  
Pumping Systems and Methods with Continuous Inflow and  
Pulsatile Outflow Conditions, consisting of: transmittal letter  
with added pages for US priority claim; 132 pages specification;  
1 page claims; 1 page abstract; 41 sheets of formal  
drawings; information disclosure statement (without copies of  
references); and Check No. 14580 - \$770.00

Sent by Express Mail Label No. EV 318693190US on 20 April  
2004

F-5495 DIV

19587 U.S. PTO  
10/828359



041704



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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/828,359	04/17/2004 [04/20/2004]	3762	770	F-5495 DIV	41	6	1

CONFIRMATION NO. 4891

RYAN KROMHOLZ & MANION, S.C.  
 Post Office Box 26618  
 MILWAUKEE, WI 53226

## FILING RECEIPT



\*OC000000013105176\*

Date Mailed: 06/29/2004

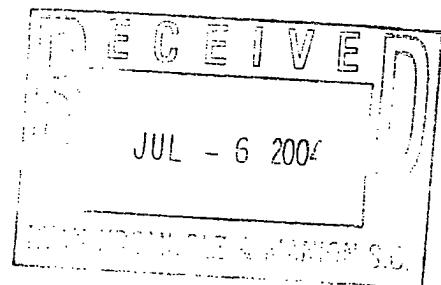
Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

## Applicant(s)

Tom Westberg, Residence Not Provided;  
 Mark Vandlik, Residence Not Provided;  
 Rohit Vishnoi, Residence Not Provided;

## Assignment For Published Patent Application

Baxter International Inc.;



## Domestic Priority data as claimed by applicant

## Foreign Applications

If Required, Foreign Filing License Granted: 06/29/2004

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

## Title

Fluid pressure actuated blood pumping systems and methods with continuous inflow and pulsatile outflow conditions

Preliminary Class

604

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Title 37, Code of Federal Regulations, 5.11 & 5.15**

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